STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

North Shore Gas Company The Peoples Gas Light and Coke Company Petition Pursuant to Section 8-104 of the Public Utilities Act to Submit an Energy Efficiency Plan	))))))))	Docket No. 10-0564

BRIEF

OF

NORTH SHORE GAS COMPANY AND

THE PEOPLES GAS LIGHT AND COKE COMPANY

Jodi J. Caro
Mary Klyasheff
The Peoples Gas Light and Coke Company
Legal Services Department
130 East Randolph Drive
Chicago, Illinois 60601
312-240-4470

Dated at Chicago, Illinois this
6th day of January, 2011

Attorneys for
North Shore Gas Company
The Peoples Gas Light and Coke Company

TABLE OF CONTENTS

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

North Shore Gas Company The Peoples Gas Light and Coke Company Petition Pursuant to Section 8-104 of the Public Utilities Act to Submit an Energy Efficiency Plan	))))))))	Docket No. 10-0564

BRIEF OF NORTH SHORE GAS COMPANY AND THE PEOPLES GAS LIGHT AND COKE COMPANY

Pursuant to Section 200.800 of the Illinois Commerce Commission's ("Commission") Rules of Practice (83 Ill. Admin. Code §200.800) and the schedule that the Administrative Law Judge established by Notice issued November 1, 2010, Petitioners, North Shore Gas Company ("North Shore") and The Peoples Gas Light and Coke Company ("Peoples Gas") (together, the "Utilities"), submit their Brief in the above-captioned proceeding.

I. Introduction

Public Act 96-0033, *inter alia,* added Section 8-104 to the Public Utilities Act ("Act"). 220 ILCS 5/8-104. Section 8-104 of the Act requires gas utilities serving more than 100,000 customers on January 1, 2009, to file an energy efficiency plan no later than October 1, 2010. North Shore and Peoples Gas each meet this criterion. On September 30, 2010, they filed a plan for the period June 1, 2011, through May 31, 2014 ("Plan Period"). The filing included the Direct Testimony (NS-PGL Ex. 1.0) and exhibits (NS-PGL Exs. 1.1 and 1.2) of Michael Marks and the Direct Testimony (NS-PGL 2.0) and Exhibits (NS-PGL Exs. 2.1 - 2.7) of Edward M. Korenchan.[1]

Section 8-104(f), states, in relevant part, that: "No later than October 1, 2010, each gas utility shall file an energy efficiency plan with the Commission to meet the energy efficiency standards through May 31, 2014. … The Commission shall seek public comment on the utility's plan and shall issue an order approving or disapproving each plan." The Utilities' September 30, 2010 filing, satisfied the first part of these requirements. In addition to the direct testimony and exhibits filed by the Utilities, the Commission received extensive comments in the form of testimony and exhibits from Staff and interveners and rebuttal testimony and an exhibit from the Utilities. The Utilities filed the rebuttal testimony of Mr. Marks (NS-PGL Ex. 3.0) and Mr. Korenchan (NS-PGL Ex. 4.0 and Ex. 4.1). That rebuttal testimony responded to Staff and intervener testimony and indicated that certain legal issues would be addressed in this brief, rather than through testimony. An evidentiary hearing providing for the cross-examination of all witnesses occurred on December 20, 2010. The schedule set by the Administrative Law Judge also provided for the Utilities, Staff and interveners to file briefs and proposed forms of order.

Section 8-104(f) requires the utility's plan to set forth its "proposals to meet the utility's portion of the energy efficiency standards identified in subsection (c) of this Section, as modified by subsection (d) of this Section, taking into account the unique circumstances of the utility's service territory." 220 ILCS 5/8-104(f). The required savings are based on a percentage of calendar year 2009 gas deliveries to retail

[1] North Shore and Peoples Gas subsequently filed a revised version of Mr. Korenchan's Direct Testimony (NS-PGL Ex. 2.0 REV) and his Exhibit 2.6 (NS-PGL Ex. 2.6 REV).

customers, excluding deliveries to customers covered by Section 8-104(m). For the first Plan Period, the required savings are: 0.2% by May 31, 2012; an additional 0.4% by May 31, 2013; and an additional 0.6% by May 31, 2014. The total savings for the Plan Period are 1.2%. The utility is not responsible for developing and implementing measures to meet 100% of the required savings. Section 8-104(e) requires the utility to use 75% of the available funding to meet 80% of the efficiency goals. The Department of Commerce and Economic Opportunity ("DCEO") may use 25% of the available funding to achieve no less than 20% of the required savings.

The Utilities' proposal meets all the requirements of Section 8-104 of the Act in a prudent and cost effective way. The Plan also achieves the Utilities' key objectives of achieving savings as cost effectively as possible and providing programs to residential and commercial and industrial ("C&I") customers at approximately the same proportion as the revenues they contribute to the customer base. The Utilities' proposed cost recovery tariffs, Rider EOA, including changes agreed to in response to Commission Staff data requests, are likewise compliant with the Act.

The Commission should approve the Plan, as filed, and proposed Rider EOA, as modified, for each of North Shore and Peoples Gas.

II. North Shore and Peoples Gas Are Not Electing Treatment as a Single Utility

North Shore is a corporation organized and existing under the laws of the State of Illinois, having its principal office at 130 East Randolph Drive, Chicago, Illinois 60601. It is engaged in the business of purchasing natural gas for and distributing and selling natural gas to approximately 158,000 customers in Cook and Lake Counties, Illinois. North Shore is a wholly-owned subsidiary of Peoples Energy Corporation ("PEC"), which, in turn, is a wholly-owned subsidiary of Integrys Energy Group, Inc. ("Integrys"). NS-PGL Ex. 2.0 REV at 2.

Peoples Gas is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business at 130 East Randolph Drive, Chicago, Illinois 60601. Peoples Gas is engaged in the business of purchasing natural gas for and distributing and selling natural gas to approximately 817,000 customers within the City of Chicago, Illinois. Like North Shore, Peoples Gas is a wholly-owned subsidiary of PEC, which, in turn, is a wholly-owned subsidiary of Integrys. *Id*. at 2-3.

Section 8-104(h) permits utilities affiliated by virtue of a common parent, as North Shore and Peoples Gas are, to be considered a single utility for purposes of Section 8-104. North Shore and Peoples Gas are not electing treatment as a single utility. However, they jointly submitted a Plan and supporting testimony given the substantial similarities between the energy efficiency programs that each proposes to offer. While similar, the programs proposed to be offered by North Shore and Peoples Gas differ in some respects to address differences in each utility's service territory. Likewise, each utility's proposed cost recovery tariff is substantially the same. *Id*. at 3. Neither Staff nor any party opposed the Utilities' filing in a single docket. It is reasonable and efficient to consider both Utilities' compliance filings in the same docket but to recognize that each utility will implement its programs under the Plan separately and will have separate cost recovery tariffs.

III. Section 8-104(f) Filing Requirements

Section 8-104(f) requires that the utility's plan address eight items. As addressed in this Section III, the Utilities addressed each item fully and their Plan satisfies all Section 8-104(f)'s requirements. The Plan should be approved as filed.

A. Section 8-104(f)(1)

Section 8-104(f)(1) states that the utility shall: "Demonstrate that its proposed energy efficiency measures will achieve the requirements that are identified in subsection (c) of this Section, as modified by subsection (d) of this Section." The Plan shows the required savings and how each of the Utilities will meet the required savings.

1. Required Savings

The starting point for determining the required savings is calendar year 2009 deliveries to retail customers. Section 8-104(c) states, in relevant part, that: "Natural gas utilities shall implement cost-effective energy efficiency measures to meet at least the following natural gas savings requirements, which shall be based upon the total amount of gas delivered to retail customers, other than the customers described in subsection (m) of this Section, during calendar year 2009 multiplied by the applicable percentage." 220 ILCS 5/8-104(c). The applicable percentages are: 0.2% by May 31, 2012; an additional 0.4% by May 31, 2013; and an additional 0.6% by May 31, 2014.

a. The Utilities' Savings Levels for the Plan Period

Mr. Korenchan's direct testimony shows that such deliveries for North Shore were 248,678,312 therms and for Peoples Gas were 1,139,309,191 therms. NS-PGL Ex. 2.0 REV at 15. Each of the Utilities must, subject to certain exceptions, achieve savings equal to 80% of the required savings. DCEO is responsible for the remaining

20%. Applying the statutory requirements to these deliveries, the applicable savings levels (in therms) are:

	Peoples Gas	DCEO	Total
Program Year 1	1,822,894	455,724	2,278,618
Program Year 2	3,645,790	911,447	4,557,237
Program Year 3	5,468,684	1,367,171	6,835,855
	North Shore	**DCEO**	**Total**
Program Year 1	397,886	99,471	497,357
Program Year 2	795,771	198,943	994,714
Program Year 3	1,193,657	298,414	1,492,071

Id.; *also see* NS-PGL Ex. 2.5. "Program Year" refers to the twelve-month period beginning June 1 and Program Year 1 is June 1, 2011, through May 31, 2012. NS-PGL Ex. 1.2 at 9.

Although the Utilities calculated the savings levels by Program Year, they need not achieve the specified level each year as long as they achieve the required 1.2% savings during the Plan Period. Section 8-104(c) permits gas utilities to meet targets each year or to meet the target by Plan Period. The subsection states, in relevant part, that: "Natural gas utilities may comply with this Section by meeting the annual incremental savings goal in the applicable year or by showing that total savings associated with measures implemented after May 31, 2011 were equal to the sum of each annual incremental savings requirement from May 31, 2011 through the end of the applicable year." 220 ILCS 5/8-104(c). The Utilities' Plan is designed to meet the targets each year and, consistent with this approach, their proposed funding ramps up over the Plan Period. As discussed in Section III.D, *infra*, this approach differs from how DCEO plans to meet its savings goals.

b. Retail Customer Deliveries

The retail customer deliveries that are the starting point of the above calculations exclude deliveries to customers subject to subsection (m) and large volume transportation customers who purchase their supply in the wholesale market. Both exclusions are based on Section 8-104. The relevant language in subsection (c) is "based upon the total amount of gas delivered to retail customers, other than the customers described in subsection (m) of this Section, during calendar year 2009." Excluding customers meeting the criteria in subsection (m) is required by the words "other than the customers described in subsection (m) of this Section." Neither Staff nor any party contests the exclusion of these deliveries. Excluding large volume transportation customer deliveries is required by the words "retail customers." Commission Staff witness Richard J. Zuraski stated that Staff may defend an alternative interpretation in its brief. ICC Staff Ex. 2.0 at 3. Illinois Attorney General ("AG") witness Philip H. Mosenthal disagreed with the Utilities' interpretation of "retail customers." AG Ex. 1.0 at 8-13.

Section 8-104 does not define the term "retail customers." Other sections of the Act applicable to gas utilities do not define "retail customers." Mr. Mosenthal states that, if the Utilities consider small customers purchasing gas from a third party to be "retail," just being larger should not make a customer "wholesale." *Id*. at 11. However, in the absence of a definition of "retail customer" for purposes of Section 8-104 and given that the General Assembly chose to define the obligation in terms of retail customer deliveries (and not just "customer," which would unambiguously mean all utility service customers), it is reasonable to conclude that the term "retail" in Section 8-104 exists to distinguish among customers that the utility serves.[2] It is also reasonable and appropriate to look to legislative history and the laws defining the Commission's jurisdiction over non-utility suppliers to help ascertain what "retail" may mean in Section 8-104. It is permissible to consider legislative history in this context because "retail customer," as used in Section 8-104, is not unambiguous. *Id*.; *also see*, People v. Collins, 214 Ill. 2d 206, 214 ("Where statutory language is ambiguous, however, we may consider other extrinsic aids for construction, such as legislative history and transcripts of legislative debates, to resolve the ambiguity.").

The key question is whether distinguishing between sales and transportation customers and further distinguishing between types of transportation customers is appropriate in construing the term "retail customers" in Section 8-104. Illinois law draws distinctions between smaller use gas customers who purchase their supply from non-utility suppliers and larger use gas customers. The General Assembly apparently sought to make similar distinctions in Section 8-104.

---

[2] "The principles informing statutory construction are familiar. The primary rule of statutory construction is to ascertain and give effect to the legislature's true intent and meaning. [citation omitted]. The language of the statute is the best indication of legislative intent, and our inquiry appropriately begins with the words used by the legislature. [citation omitted]. If the statutory language is clear and unambiguous, then there is no need to resort to other aids of construction. [citation omitted]. However, when the language used is susceptible to more than one equally reasonable interpretation, the court may look to additional sources to determine the legislature's intent. [citation omitted]. All provisions of a statutory enactment are viewed as a whole. [citation omitted]. Accordingly, all words and phrases must be interpreted in light of other relevant provisions of the statute and must not be construed in isolation. [citation omitted]. Each word, clause and sentence of the statute, if possible, must be given reasonable meaning and not rendered superfluous. [citation omitted]." (emphasis added) Brucker v. Merola, 227 Ill. 2d 502, 513-514.

During the General Assembly's House of Representatives' legislative debates, a sponsor of the bill that included Section 8-104 explained that, in calculating charges, gas purchased at wholesale and only transported by the gas utility would be excluded. By contrast, gas purchased at retail from certified alternative gas suppliers and transported by the gas utility would be included. NS-PGL Ex. 2.7; *also see* NS-PGL Ex. 2.0 REV at 15-16. The distinction between "wholesale" and "retail" was described as follows:

> Reitz: So, what is excluded is the wholesale commodity cost, the utilities cost for transportation for that wholesale commodity is included, right?
> Flider: That's correct, yes.
> Reitz: And you were talking about excluding only wholesale commodity purchases, retail gas purchases from public utilities, and certified alternative gas suppliers are included, right?
> Flider: Yes.

NS-PGL Ex. 2.7.

The Utilities' proposal includes as "gas delivered to retail customers" all gas that each utility sold and delivered to customers in calendar year 2009 under its Commission-approved tariffs and all gas that it delivered to customers taking services under its small volume transportation customer programs. For the Utilities, the distinction between "wholesale" and "retail" embodied in the debate is well-represented by the two transportation programs the Utilities offer. Alternative suppliers serving customers in the small volume program are generally certified alternative gas suppliers. Alternative suppliers serving customers in the large volume program generally need not be certified suppliers. NS-PGL Ex. 2.0 REV at 16.

The demarcation between the two programs is a very good, albeit not a perfect, proxy. The criterion requiring an alternative gas supplier to receive Commission certification is that the supplier wishes to serve residential service customers or small commercial customers, which means non-residential retail customers having annual gas consumption of 5,000 therms or less. 220 ILCS 5/19-105, 19-110. Eligibility for the Utilities' programs is based on service classification and not annual consumption. However, the small volume program is the only one open to residential customers, so suppliers serving those customers must be certified. It is also open to Service Classification ("S.C.") No. 2 customers, which includes small commercial customers. The large volume program is not open to residential customers, and a supplier would need to be certified only if it opted to serve small commercial customers under that program. *See* Riders CFY, FST and SST of each of the Utilities' Schedule of Rates for Gas Service on file with the Commission.[3]

Certification requirements for gas and electric utilities are different. The Electric Service Customer Choice and Rate Relief Law of 1997 (220 ILCS 5/16-101 *et seq*.) defines "retail customers." Among other things, this law requires all alternative retail electric suppliers to receive Commission certification. *See* 220 ILCS 5/16-115, which requires certification of all alternative retail electric suppliers, and 220 ILCS 5/16-102, which defines "retail customers" and "alternative retail electric suppliers" broadly. By contrast, the Alternative Gas Supplier Law (220 ILCS 5/19-100 *et seq*.) (the "AGS Law") does not define "retail customers" and applies to service to a smaller universe of customers. The AGS Law uses the term "retail" in various contexts. For example, "small commercial customer[s]" are certain "nonresidential retail customer[s]." 220 ILCS 5/19-105. The AGS Law uses the term "alternative retail gas supplier" in some sections to describe the entities serving residential and small commercial customers.

[3] The Commission may take administrative notice of "Annual reports, tariffs, classifications and schedules regularly established by or filed with the Commission as required or authorized by law or by an order or rule of the Commission." 83 Ill. Admin. Code §200.640(a)(3).

See, e.g., 220 ILCS 5/19-111(c)(4); 19-125(a-15). Unlike services to electric utility customers, only the alternative suppliers to residential and small commercial customers are required to receive Commission certification. ("The provisions of this Section shall apply only to alternative gas suppliers serving or seeking to serve residential or small commercial customers and only to the extent such alternative gas suppliers provide services to residential or small commercial customers." 220 ILCS 5/19-110(a), Certification of Alternative Gas Suppliers). The exchange between Representatives Reitz and Flider makes sense in the context of the distinctions that the General Assembly had previously made for alternative suppliers in the gas markets.

The Utilities agree with Mr. Mosenthal that the standard definition of "wholesale" would mean a customer who is not the ultimate end user. AG Ex. 1.0 at 11. However, the exchange between Representatives Reitz and Flider shows that they were using the term "wholesale" differently. The AGS Law clearly distinguishes between small gas users and large gas users in determining regulation of non-utility suppliers. Contrary to Mr. Mosenthal's conclusion that "just being larger" does not make a customer "wholesale" (AG Ex. 1.0 at 11), Representatives Reitz and Flider were making that very distinction. The Utilities' interpretation of Section 8-104 is reasonable.

Although the Utilities do not agree that it is proper to add transportation customer deliveries to compute the savings requirements, they agree that the data Mr. Zuraski includes in his testimony are accurate under the alternative interpretation he describes. NS-PGL Ex. 4.0 at 4; *see* ICC Staff Ex. 2.2. By contrast, Mr. Mosenthal's calculation is grossly overstated and actually results in deliveries that are double what the Utilities actually delivered to all customers. NS-PGL Ex. 4.0 at 4. If the Commission adopts the alternative interpretation of "retail customers," then the Utilities respectfully request that the Commission find that the data in Mr. Zuraski's exhibit apply to the Utilities and reject Mr. Mosenthal's calculations.

c. Effect on Rate Impact Budget Cap

A related issue is the calculation of the rate impact budget cap, which is discussed in Section III.A.3, *infra*. The Utilities note that Mr. Zuraski did not dispute the Utilities' exclusion of estimated revenues from therms sold to large volume transportation customers in determining this cap. ICC Staff Ex. 2.0 at 7. Mr. Zuraski's alternative approach would create the conundrum under which the large volume transportation deliveries are included for purposes of calculating the savings requirements, *i.e*., increasing the required savings, but excluded for purposes of calculating the funding available to meet the savings requirements, *i.e*., reducing available funding. (Mr. Mosenthal would include commodity costs associated with large volume transportation customers in calculating the cap. AG Ex. 1.0 at 15-16.) The Utilities' interpretation of Section 8-104 treats large volume transportation customers' deliveries and revenues consistently and does not, by virtue of inconsistent treatment, result in fewer funds to meet larger requirements.

2. Meeting the Required Savings Levels

The Plan's overriding objectives are to achieve the annual savings goals as cost effectively as possible and to provide programs to residential and C&I customers at approximately the same proportion as the revenues each sector contributes to the customer base. Additional objectives are that the Plan:

- is cost effective at the measure, program and portfolio levels;

- uses multiple implementation approaches to maximize program participation and minimize program administrative and delivery costs;
- is easy to modify and adapt to changing market conditions;
- is scalable to ramp up or down as markets, technologies, and opportunities evolve;
- offers diverse program offerings making energy efficiency opportunities available to all customer classes; and
- represents a cost-effective mix of programs aimed at ensuring overall portfolio success.

NS-PGL Ex. 1.0 at 4-5.

Tables 4A and 4B and Section 3.8 of the Plan show how each utility will meet the savings levels applicable to the Utilities. NS-PGL Ex. 1.2 at 9-10 and 41-90. The Utilities are proposing four programs for residential customers and four programs for C&I customers. *Id.* at 42.

The four residential programs are:

- Residential Prescriptive Rebate Program, which would provide residential customers incentives to install measures that improve the heating efficiency of the premises. The program is targeted to two types of customers with gas heating: homes with individual heating systems and individually metered residences; and large multifamily buildings with a central heating system and central meter. The Utilities plan to launch the program June 1, 2011. *Id.* at 44-50.

- Residential Home Energy Reports, which would provide single family homeowners with consistent feedback on their energy use, comparisons to similar homes in their neighborhood, and targeted tips to achieve energy savings. The program is available to all residential customers, but it is targeted to single family homes in the high-impact savings segments (high gas users). The Utilities plan to launch the program June 1, 2012. *Id.* at 51-54.
- Residential Multifamily Direct Install Program, which has the objective of securing energy savings by installing low cost hot water and space heating savings measures. The program is targeted to residential customers who live in multifamily buildings and multifamily building owners and property managers. The Utilities plan to launch the program June 1, 2011. *Id.* at 55-59.
- Residential Whole House Retrofit Program, which is a placeholder for possible participation in an Illinois Home Performance with Energy Star pilot program. It would be targeted to single family homes heated with gas. The Utilities anticipate launching the program June 1, 2013. *Id.* at 60-64.

The four C&I programs are:

- C&I Prescriptive Rebates Program, which would encourage the installation of higher efficiency equipment and would provide incentives for installing, replacing or retrofitting qualifying equipment. The program is targeted to C&I customers, particularly smaller use customers. The Utilities plan to launch the program June 1, 2011. *Id.* at 65-73.
- C&I Custom Rebates Program, which would provide C&I customers with rebate incentives for the installation of gas-related efficiency improvements that are not

specified for a prescriptive rebate. The program is targeted to C&I customers with projects not specified under the C&I Prescriptive Rebates Program. It is available to existing and new construction markets. The Utilities plan to launch the program June 1, 2011. *Id.* at 74-78.

- C&I Retro-Commissioning Program, which is a program to conduct tests to ensure that systems operate as designed and optimize system operations in the context of how buildings are currently used. It is targeted to large C&I customers. The Utilities plan to launch the program June 1, 2011. *Id.* at 79-83.
- Small Business Efficiency Program, which is an assortment of measures targeted to smaller C&I customers and may include direct installation of low cost measures and energy audits. The Utilities plan to launch the program June 1, 2011. *Id.* at 84-90.

The Utilities developed the North Shore and Peoples Gas portfolios independently based upon the unique characteristics of each service area. While the Plan has the same eight programs for each utility, those programs have specific features that best support each utility's customers. For example, in the Residential Prescriptive Rebate Program, heating system rebates are higher for Peoples Gas than North Shore based on the experience in the Chicagoland Program and trade ally discussions. (The "Chicagoland Program" is the energy efficiency programs currently available in the Utilities' service territories.) NS-PGL Ex. 1.0 at 5-6.

Staff and interveners had only limited testimony on the various programs. Neither Staff nor interveners oppose any of the programs or question their inclusion in the Plan.

a. C&I Funding Levels

Citizens Utility Board-City of Chicago ("CUB-City") witness Christopher C. Thomas stated that he was "…concerned that not enough funding is spent on commercial and industrial programs." CUB-City Ex. 1.0 at 6. The Utilities' proposed split is reasonable. As stated above, initial program funding was established based on the proportion of residential *versus* C&I revenue, and this was one of two overriding objectives underlying the Plan. The Utilities expect that this will shift over time as the ability to achieve higher goals will become more dependent on the C&I market. NS-PGL Ex. 3.0 at 18. For this first Plan Period, the split is reasonable and should be approved.

b. Residential Home Energy Reports Program

Regarding the Residential Home Energy Reports Program, Mr. Thomas recommended that "[t]he Company should include stakeholders in the RFP [request for proposal] development process, … ." CUB-City Ex. 1.0 at 11. He also provided many suggestions on what the program design should include. *Id*. at 10-14. The Utilities disagree with these proposals. The Utilities do not intend to include stakeholders in RFP development, as some stakeholders may wish to bid or partner on a particular RFP, and the Utilities do not want to create any potential conflicts. However, the Utilities intend to issue an RFP that will allow for a wide diversity in responses and program design concepts. It is premature to develop program design details, especially since the Utilities do not plan to launch the Residential Home Energy Reports Program until the middle of 2012. The Utilities view this as an evolving product and expect innovations to occur between now and when they plan to launch the program. One feature the Utilities will be seeking in any proposal is a proven track record of savings. NS-PGL Ex. 3.0 at 26.

c. Increase Spending Beyond the Proposed Levels

Environmental Law and Policy Center ("ELPC") witness Mr. Geoffrey C. Crandall opined that North Shore and Peoples Gas may fall short of the statutory goals and describes their Plan as having "little room for error." ELPC Ex. 1.0 at 7-8. He also questioned DCEO's ability to meet its 20% savings levels. *Id*. at 7-9. Finally, he recommended that the Commission direct North Shore and Peoples Gas to increase spending to the lesser of the maximum under the price cap or the maximum scope of the programs that they can cost-effectively manage. *Id*. at 10.

The Commission should reject Mr. Crandall's recommendations. The Plan is designed to meet the Utilities' statutory requirements. Failure to meet the savings requirements requires, under Section 8-104(i), a significant contribution to the Low-Income Home Energy Assistance Program. 220 ILCS 5/8-104(i). Thus, the Utilities have ample incentives to meet the statutory savings requirements. Mr. Crandall is correct that the Utilities have room under the rate impact budget cap, but that is irrelevant. The cap is an exception to meeting those savings requirements; it is not a recommended spending level. Section 8-104 requires the Utilities to achieve specific savings. Their proposed Plan is designed to meet these requirements, and the Plan shows in detail how it will do so. The General Assembly could have elected to mandate spending up to the cap, but it did not make that policy decision. The Commission lacks the authority to substitute its policy decisions for the General Assembly and require the Utilities achieve savings in excess of the statutory levels or increase spending beyond what is needed to achieve the Utilities' requirements.[4] Note that one of the Utilities' two overriding Plan objectives was to achieve the annual savings goals as cost effectively as possible. NS-PGL Ex. 1.0 at 4. Their Plan satisfies this objective.

The Utilities take no position on whether DCEO will be able to achieve its statutorily mandated savings level of 20%. If Mr. Crandall is suggesting that, if DCEO falls short of its requirements, this somehow means the Utilities have not achieved their savings requirements, he is incorrect. Section 8-104(j) states that "[n]o utility shall be deemed to have failed to meet the energy efficiency standards to the extent any such failure is due to a failure of the Department." 220 ILCS 5/8-104(j). The Utilities' responsibility is clearly limited to 80% of the savings requirements, and they may use only 75% of available funding to meet their requirements. Section 8-104(e) states that "[t]he remaining 25% of available funding shall be used by the Department of Commerce and Economic Opportunity to implement energy efficiency measures that achieve no less than 20% of the requirements of subsection (c) of this Section." 220 ILCS 5/8-104(e) (emphasis added).

3. Exceptions to Meeting the Required Savings Levels

The law includes two key exceptions to meeting the required savings level. First, a utility must limit the measures implemented in any three-year planning period as needed to limit the average increase for gas service to retail customers to no more than 2% for the period. 220 ILCS 5/8-104(d). This limit should not affect the Utilities' ability

[4] "The Commission, because it is a creature of the legislature, derives its power and authority solely from the statute creating it, and its acts or orders which are beyond the purview of the statute are void." City of Chicago v. Illinois Commerce Com. (1980), 79 Ill.2d 213, 217-18, citing People ex rel. Illinois Highway Transportation Co. v. Biggs (1949), 402 Ill. 401, 409.

to meet their portion of the statutory goals for the Plan Period.[5] Their calculation of this cap is based on estimated amounts for the first Program Year. The statutory caps for the Plan Period are $27,113,945 for Peoples Gas and $5,354,246 for North Shore. The Utilities' estimated rate impact of implementing the proposed measures is within the statutory cap. NS-PGL Ex. 2.0 REV at 16-17; NS-PGL Ex. 2.6 REV. Second, as stated above, if a utility does not meet the required savings because of DCEO's failure, then the utility is deemed not to have failed. 220 ILCS 5/8-104(j).

As stated in Section III.A.1.c, *supra*, the calculation of the rate impact cap is at issue. Mr. Zuraski's calculation of the cap is identical to the Utilities' calculation, and his exhibit notes that "[u]nless a better three year forecast becomes available, this tripling of the one year approach represents a reasonable approximation." ICC Staff Ex. 2.2. This calculation apparently accepts the Utilities' exclusion of revenues associated with gas sold by non-utility suppliers to large volume transportation customers. Mr. Mosenthal disagrees with this exclusion. For the reasons stated in Section III.A.1.b, *supra*, it is proper to exclude these revenues.

This calculation is expressly the subject of the legislative history underlying Section 8-104 of the Act. As quoted above,

> Reitz: So, what is excluded is the wholesale commodity cost, the utilities cost for transportation for that wholesale commodity is included, right?
> Flider: That's correct, yes.
> Reitz: And you were talking about excluding only wholesale commodity purchases, retail gas purchases from public utilities, and certified alternative gas suppliers are included, right?
> Flider: Yes.

[5] The cost data included in the Plan are based on the savings levels that the Utilities calculated under their legal interpretation, which excludes large volume transportation customer deliveries from the calculation of deliveries to retail customers.

NS-PGL Ex. 2.7. The costs to be included in calculating the cap are only retail gas purchases from the public utilities and retail gas purchases from certified alternative gas suppliers. The Utilities followed this formula to the greatest extent practicable, given their data. As explained above and as Mr. Zuraski discusses (ICC Staff Ex. 2.0 at 7-8), the Utilities used their small volume transportation program as a proxy for retail gas purchases from certified alternative gas suppliers. The Utilities' calculation of the rate impact cap is accurate and consistent with Section 8-104 of the Act, as bolstered by the legislative history addressing this precise issue. It should be approved.

4. Key Assumptions Underlying the Utilities' Plan

The Utilities' Plan assumes that the Commission approves deemed savings for the full three-year Plan Period. Deemed savings are estimates for the savings for which each measure will be credited. They are "deemed" to be reasonable. Thus, measure savings are fixed for the approved period (*i.e.*, the three-year Plan Period) and used to determine if the Utilities meet their program requirements. Approving this approach is reasonable. To gauge the performance of the Utilities' energy efficiency portfolios, clear and consistent evaluation standards must be agreed upon prior to implementation of the programs. NS-PGL Ex. 1.0 at 15-16.

The technical assumptions that the Utilities used to develop the deemed savings values were based on a variety of sources, including engineering knowledge, industry expert input, manufacturer's information and historical program experience using other utility deemed savings values. The Plan's technical assumptions describe the baseline energy values for each measure in each program in each of the Utilities' energy efficiency portfolio. The technical assumptions also detail the high efficiency options for each measure as compared to the baseline option. The difference between the high efficiency and baseline options is the savings for the measure. These technical assumptions include: operating hours; net-to-gross ("NTG") ratio; measure lifetime; customer savings per measure; and incremental measure cost. *Id*.

For example, assume that the minimum efficiency furnace is 78% Annual Fuel Utilization Efficiency ("AFUE"). Under the Plan, the high efficiency furnace for which there is an incentive is a minimum of 92% AFUE. Without including any adjustments, using engineering algorithms, the Utilities would estimate a reduction in energy use for the Chicago metropolitan area. The percentage savings would be applied to the average heating usage based on the area's degree days. Savings estimates can be validated by using total billed usage. The result would be the "deemed" savings in therms. *Id*. at 16.

The deemed savings include NTG adjustments. Possible adjustments one might make to a gross savings estimate include: free riders; participant spillover; non-participant spillover; and measure persistence. For example, "free riders" are participants who would have taken the same energy efficiency action without the program. "Participant spillover" means participants who take additional actions as a result of the program but do not receive any incentives for these actions. "Non-participant spillover" can take a number of forms. A customer can take an action as a result of the program but those actions do not qualify him for any incentive; thus, the energy savings never get credited to the program. Another customer might take an action as a result of the program that does qualify for an incentive, but he does not apply for the incentive; the energy savings never get credited to the program. "Measure persistence" means efficiency measures that are credited as program participants but are removed or not replaced when they fail prematurely. *Id*. at 17-18.

The deemed values would be subject to evaluation, measurement and verification ("EM&V"), but prospectively. The Utilities would apply the evaluation results to future deemed values in the next three-year planning period. The results would not adjust the deemed values approved in this proceeding. *Id*. at 17.

Mr. Mosenthal and Mr. Crandall addressed these aspects of the Utilities' proposals. Mr. Marks explained that many of the arguments regarding fixed values, deeming, NTG and related issues are confusing. He explained that these terms could be grouped into something called a "realization rate." NS-PGL Ex. 3.0 at 2. He defined a "realization rate" in this context as the total difference between what the utility initially claims as savings for any measure and what is counted as final savings towards meeting the targets. Anything that is subject to change by the implementation contractor or independent evaluator will affect the realization rate. *Id*. at 3.

To address broadly the concerns and criticisms of Messrs. Mosenthal and Crandall, Mr. Marks, in his rebuttal testimony, elaborated on the EM&V framework presented in his direct testimony. *Id*. at 3-6.

In general, the Utilities' proposed framework captures all the key components to updating realization rates. This framework negates the need for explicit Commission guidance for realization rates. If the Commission directs the independent evaluator to calculate Plan energy savings as the product of verified participation, unit savings, and NTG ratios and if the Commission provides guidance with regard to the use of fixed/deemed values and prospective/retrospective application, then all issues related to realization rates can be addressed through the definition of fixed/deemed values or through the independent evaluator's assessment of retrospective evaluation results. *Id*. at 3.

The Utilities' EM&V framework is comprised of the following five components:

1) Evaluation cycle: Independent evaluator conducts at least one impact evaluation and one process evaluation for each program during the three-year Plan Period.
2) Gross savings for standard measures: Gross savings is savings prior to any NTG adjustment. The two factors needed to calculate gross savings are participation and measure unit savings. The independent evaluator would verify and update participation values each year. Similarly, unit savings values would be updated annually based upon available evaluation results, for application in the beginning of each new plan year. Changes in unit savings values would always be applied prospectively. As new evaluation results are completed, unit savings values would be applied prospectively in the following Plan year. For example, evaluation results completed prior to March 1 would be incorporated the following Plan year, which begins June 1.
3) Impacts for custom measures: The independent evaluator would annually verify impacts for custom measures. The Utilities would apply any changes retrospectively.

4) NTG ratios: NTG ratio values would be consistent with those approved in the Plan and remain unchanged for the entire three-year Plan Period.
5) Development of a technical reference manual: Each of the Utilities would develop a technical reference manual ("TRM"), specific to it, to document the algorithms and assumptions used to derive each input.

Id. at 4-6.

Retroactively applying evaluation results would negatively affect Plan implementation and delivery of programs and savings to customers. Assume, as a worst case scenario, that an EM&V study for a specific program or measure results in a 50% reduction in program savings. If this occurred, the Utilities would be forced to spend significantly more money trying to make up for the lost savings. Another outcome may be that the Utilities would discontinue that program or measure immediately given the high cost per therm saved and the likelihood that it would fail the TRC test at these reduced savings levels. This has a profound impact on implementation activity. Program implementation strategies require significant planning and support from trade allies, education of customers, marketing and promotion campaigns, building of infrastructure, *etc*. This takes many months of effort and significant investment. Making substantial changes midstream because of a "bad" EM&V result can be disruptive and costly to a program. It is more effective to apply EM&V to future planning and use the information to modify and optimize program designs. These types of changes should be transitional and planned out carefully, as opposed to a "knee jerk" reaction to an EM&V finding that has significant uncertainty. NS-PGL Ex. 1.0 at 23-24.

The Utilities' proposed EM&V framework comprehensively and clearly addresses the comments and concerns about calculating savings. The framework is a reasonable way to balance concerns about accurately and timely calculating savings with the risk to the Utilities of changing the rules in the middle of the Plan Period when making mid-course corrections to meet statutory requirements. The Commission should approve the Utilities' proposal.

a. Three-Year Evaluation Cycle

Only Mr. Mosenthal opposed a three-year evaluation cycle approach. He stated that this approach for one evaluation per program per Plan cycle was too "prescriptive" and instead recommended a deliberative process through which "the SAG [stakeholder advisory group], in concert with the evaluation contractors, explore these trade-offs and work together to develop EM&V high-level plans." AG Ex. 1.0 at 43-45. The Utilities disagree that their proposed EM&V framework is prescriptive or rigid. The Utilities will be flexible based upon the availability of funds and where those funds can best be used. They will rely on the expertise of the independent EM&V contractors for many of these decisions. NS-PGL Ex. 3.0 at 6.

Resolution of any EM&V issues must recognize the statutory limitation on spending for evaluation. Specifically, Section 8-104(f)(8) states that "[t]he resources dedicated to evaluation shall not exceed 3% of portfolio resources in any given 3-year period."[6] 220 ILCS 5/8-104(f)(8). This necessarily means that the EM&V budgets are small in the first two years of the Plan Period and cannot support EM&V for all programs. Navigant Consulting, Inc. ("Navigant") the Utilities' independent EM&V contractor, expressed some concern about its ability to conduct EM&V with a budget equal to just 3% of the portfolio costs. Thus, the Utilities expect to have EM&V results for only some programs. NS-PGL Ex. 1.0 at 23.

b. Gross Savings for Standard Measures

Most witnesses expressed no opinions on deeming of fixed inputs used to calculate gross savings. Mr. Mosenthal states "I support the concept of deeming gross measure savings so long as they are restricted to standard or 'prescriptive' measures, … ." (AG Ex. 1.0 at 25). This seems to be consistent with the Utilities' approach.

The Utilities' Plan includes proposed values for all inputs to be used in calculating annual energy savings. It is imperative that the Commission approve a set of fixed input values in this proceeding. Any changes to those values could ripple through to the portfolio savings calculations, and, potentially, to portfolio spending calculations. If the Commission approves other fixed input values after finalizing portfolio savings goals and spending levels, this might force the case to be reopened to ensure that savings or spending targets are consistent with approved fixed input values. NS-PGL Ex. 3.0 at 7.

Most parties offered no position on the specific fixed input values. Mr. Mosenthal cited limited time and resources and goes on to "suggest the ICC only *provisionally*

---

[6] Dr. Brightwell requested the Commission provide guidance on budget limit on evaluation costs. Staff Ex. 1.0 at 6-7. The Utilities assumed that 3% of the total budget would be the cap for spending on evaluation. This calculation was made for each year of the three-year plan, and the Utilities intend to impose this cap on a year-by-year basis. Thus, spending will increase proportionately with the budget. NS-PGL Ex. 3.0 at 24.

deem measure savings values, and direct that the Companies address any appropriate modifications with the SAG." AG Ex. 1.0 at 25 (emphasis in original). Both Mr. Mosenthal and Mr. Crandall expressed some concerns about some of the specific fixed value assumptions. Mr. Crandall's solution was to develop a TRM (ELPC Ex. 1.0 at 20), which the Utilities do not oppose. Mr. Mosenthal provided no alternatives, firm timeline or process for approving final values outside of an "ongoing SAG process." AG Ex. 1.0 at 26.

The parties had eight weeks to review and gather discovery regarding the Utilities' proposed fixed input values, and they chose to offer the Commission no alternatives. The Utilities provided a sound basis for their proposed fixed values. The Commission should accept the Utilities' proposed fixed input values, subject to any changes directed by the Commission in its decision in this proceeding regarding savings goals, spending levels, program designs, and EM&V policies. NS-PGL Ex. 3.0 at 8.

c. Impacts for Custom Measures

There were no intervener positions contrary to the proposed EM&V framework for custom measures. Mr. Mosenthal stated "[n]o deeming of gross measure savings should be permitted for any 'custom' measures." AG Ex. 1.0 at 26. This is consistent with the Utilities' approach. Mr. Mosenthal later incorrectly stated that "I can only conclude [Peoples Gas] and [North Shore] are proposing that this value be deemed for any custom project, regardless of the actual measures, customer size, or other unique variables." *Id*. at 28. The Utilities did not assume any custom measure to be deemed. This is evident from the Plan. *See, e.g.,* NS-PGL Ex. 1.2 at 77, which describes the Commercial and Industrial Customer Custom Rebates Program in detail and includes the explanation: "Per unit savings of 5,400 therms is used as a proxy and not considered to be a deemed savings. Individual project savings will be determined on a case by case basis and reflect the actual project scope." The data to which Mr. Mosenthal is referring were used for benefit cost testing purposes only. The Utilities will estimate custom measures on a project-by-project basis using the specific characteristics for each customer. They will use these estimates to calculate incentives. Finally, as shown in the proposed EM&V framework, the Utilities will only take credit for the savings that are validated by the independent evaluator. NS-PGL Ex. 3.0 at 9.

d. NTG Ratios

Most witnesses offered no position on NTG ratios. Mr. Crandall did not agree with holding NTG ratios constant for the full three-year plan period. He recommended prospective adjustments, as the Utilities do, but he wants EM&V results to be applied once they become available. ELPC Ex. 1.0 at 22. While Mr. Crandall appears to support the policy framework that Mr. Mosenthal proposed in a memorandum he provided to the stakeholders (AG Ex. 1.2), he is not suggesting any retrospective application. *Id*; NS-PGL Ex. 3.0 at 9-10.

Mr. Mosenthal had significantly different proposals. The Utilities proposed that savings be calculated using NTG ratios that remain fixed for the entire three-year Plan Period. NS-PGL Ex. 3.0 at 10. Mr. Mosenthal proposed that NTG ratios be updated within the Plan cycle and that NTG ratios be applied retrospectively in some circumstances, namely:

- For "existing and new programs not yet evaluated";

- For “previously evaluated programs undergoing significant changes — either in the program design or delivery, or changes in the market itself.”

AG Ex. 1.0 at 40.

The framework that Mr. Mosenthal is advocating provides no clarity about which programs would be subject to retrospective treatment, which programs would be considered established, and how evaluation cycles would factor into the analysis. This uncertainty is a substantial problem. It provides no clear guidance for interpreting the operative phrase triggering retrospective evaluations: “significant changes — either in the program design or deliver, or changes in the market itself … .” (AG Ex. 1.0 at 40). This burdens the Utilities with unreasonable risks. Mr. Mosenthal’s proposal also provides no guidance for how decisions will be made to determine which programs will be subject to retrospective NTG evaluations. Presumably, the decision would lie with the independent evaluator; Staff, stakeholders, and the Utilities could provide input, but, the ultimate decision would rest with the independent evaluator. NS-PGL Ex. 3.0 at 11.

The Utilities support keeping NTG values constant for the entire three-year Plan Period. Many states are taking similar approaches, including the State of California, which recently changed its policies in a manner that is consistent with the Utilities’ recommendations. California will begin measuring performance against plan goals using gross savings, because previous approaches subjected utilities to far too much risk with regard to NTG estimation error, without providing the utilities with adequate opportunity to manage those risks within an appropriate time frame. Other states including Iowa, Minnesota, Missouri, New York, and New Jersey, have policies consistent with the Utilities' recommendations. *Id*. at 11-12.

Mr. Mosenthal cited agreements and orders from other cases in support of his position regarding the NTG issue. AG Ex. 1.0 at 22. He further stated, "I believe the Companies' NTG proposal is in conflict with both current ICC precedent and the NTG framework established by the SAG… ." *Id*. at 23-24. The SAG to which Mr. Mosenthal refers in this part of his testimony is the electric utility SAG. The gas utilities have yet to implement a single program under the new law. The purpose of this proceeding is to establish the framework for implementing the Utilities' programs. An important part of that framework is to determine the best way in which to account for program savings towards meeting the statutory goals. There is not yet a gas utility SAG in Illinois, and Mr. Mosenthal does not explain the relevance of any discussions that occurred among the electric utilities and other electric SAG members. Moreover, some of those discussions occurred over three years ago. The Utilities' Plan is a gas utility portfolio based upon industry best practice, and it should be evaluated on its own merits. NS-PGL Ex. 3.0 at 12.

Mr. Mosenthal contended that the Utilities' "deeming proposal" creates "perverse incentives" and shields them from poor performance. AG Ex. 1.0 at 29. Mr. Mosenthal also generally criticized the basis for estimating the Utilities' NTG assumptions. *Id*. at 34-36. There are distinct two issues. The first issue is setting the NTG ratios. The Utilities have proposed reasonable and unbiased NTG ratios in their Plan. NS-PGL Ex. 3.0 at 13. The Utilities started with a simple premise that the range of NTG would be between 100% and 70%. The Utilities' position is that a measure or program with an

NTG ratio below 70% should not be offered. Where market intelligence was available, the Utilities made assumptions that were consistent with this information. Absent market intelligence, the Utilities assumed 80% to be a reasonable estimate based upon industry experience. The Utilities assumed that the two direct install programs (multifamily and small business) and the behavioral change program would have no free ridership or spillover (although a reduction would be taken for measure persistence). For the C&I custom rebate program, the Plan is based on a 95% NTG ratio since each project would be reviewed prior to granting any incentive. For C&I prescriptive measures and retro-commissioning, the Plan is based on an 80% NTG ratio. For residential prescriptive furnaces (the key measure in the program), the Plan is based on a 90% NTG ratio for People Gas' service area and 70% for North Shore, both based on the Chicagoland experience and trade ally market intelligence. For all other residential measures the Plan is based on an 80% NTG ratio. NS-PGL Ex. 1.0 at 22. The Utilities developed these ratios in collaboration with the other Illinois gas utilities. No programs have started, and no incentives have been paid. There is no reason for the Utilities to understate these estimates. NS-PGL Ex. 3.0 at 13.

The second and more critical issue is that NTG ratios be held constant for the full Plan Period. All of the attributes that Mr. Mosenthal stated would affect NTG ratios (assessment of markets, customers' response to programs, shifts in program design and budgets (AG Ex. 1.0 at 29)) also affect participation levels and attainment of goals. Mr. Mosenthal ignored the fact that attaining the gross saving goals is by far the more difficult and challenging aspect in program implementation. The Utilities' witness Mr.

Marks based his conclusion on 20 years of direct implementation experience, managing very large programs. NS-PGL Ex. 3.0 at 14.

When discussing a specific measure -- high efficiency furnaces (AG Ex. 1.0 at 36-38), Mr. Mosenthal ignored specific Peoples Gas data and instead cites generic EPA data. As stated in the Plan, the Utilities had discussions with some of the largest trade allies in the Chicago area. They indicated that very little penetration of high efficiency furnaces was occurring in this area. The Utilities also had the benefit of the Chicagoland Program's experience. The Utilities met with the Chicagoland Contract Administrator, and she shared her experience with implementation over the past two years. The Utilities used this market intelligence throughout the planning process. Chicagoland has had relatively little participation in Peoples Gas' service area for its residential high efficiency furnace program. This market intelligence is current and service-area specific and, thus, more relevant in estimating NTG ratios then a generic EPA survey. NS-PGL Ex. 3.0 at 14-15.

Mr. Mosenthal stated "[i]f the Commission approves the ComEd [Commonwealth Edison Company] Settlement, I believe it would be appropriate to adopt the SAG framework as a guidance document for other utility EEPs… ." AG Ex. 1.0 at 41. The Utilities disagree. The Utilities were not participants in the ComEd proceeding in which the settlement was developed and have not agreed to it. NS-PGL Ex. 3.0 at 15. The settlement is not part of the record in this proceeding, and it would be inappropriate and procedurally erroneous to impose it on the Utilities.

e. Development of a Technical Reference Manual

Mr. Mosenthal stated “[t]he Companies (ideally in collaboration with the other Illinois gas and electric utilities) should establish and maintain a Technical Reference Manual that documents in a transparent way how savings are estimated, and supports on-going effective modification and version control.” AG Ex. 1.0 at 26. Mr. Crandall recommended that the SAG “provide assistance and be the appropriate forum for the initial review … .” ELPC Ex. 1.0 at 21.

The Utilities support the development of a utility-specific TRM. It is important that the Utilities have the responsibility for developing the TRM since they are accountable for meeting statutory savings and are responsible for portfolio implementation. This includes developing and maintaining the TRM and ensuring that it is consistent with the evaluation results from the independent evaluator and with the EM&V policy guidelines provided by the Commission in this proceeding. Consistent with their roles in other areas of portfolio implementation and evaluation, Staff and stakeholders could provide input to the TRM process, but ultimate responsibility for development should remain with the Utilities. NS-PGL Ex. 3.0 at 16-17.

Further, a separate TRM should exist for each utility and not one statewide TRM. Each utility delivers programs in a unique service territory with unique weather, market and customer characteristics that need to be captured in the algorithms and assumptions documented in the TRM. Also, each utility uses different programs, planning approaches, tracking systems and independent evaluators. These differences will determine the appropriate database and variable structure needed to manage the TRM for each utility. *Id*. at 17.

f. Stakeholder Advisory Group ("SAG")

The Utilities and some witnesses discussed the formation of and role for a gas utility stakeholder group. Contrary to Mr. Mosenthal's speculation ("… my only conclusion is that the Companies are resistant to effective good faith engagement with the SAG." (AG Ex. 1.0 at 46)), the Utilities can support a SAG. In fact, the Plan includes the following: "Going forward, the Companies and stakeholders discussed forming a Stakeholders Advisory Group ("SAG") similar to the group that currently exists for the Illinois electric utilities. The Companies could support the formation of an Illinois natural gas SAG and would fully participate in this group but urge potential participants to carefully define the group's scope." NS-PGL Ex. 1.2 at 22.

The Utilities expect that a gas utility SAG would include members with a variety of interests. This would include consumer advocates, environmental advocates, community leaders, third party program administrators, program implementers, and other entities interested in the energy efficiency marketplace. Staff participates in the electric utility SAG meetings, and the Utilities expect that Staff would participate in any gas utility SAG. The Utilities would appreciate and value the information gained from the dialogue fostered by this group. However, extending decision-making authority to this group, for any aspect of the Plan, is not appropriate and has the potential of impeding timely implementation of the programs and related evaluations. NS-PGL Ex. 3.0 at 19. The name is accurate -- Stakeholder Advisory Group. Its role should, indeed, be advisory.

Section 8-104 places the responsibility to meet savings goals on the Utilities and DCEO, and it also makes the Utilities liable if they do not meet the goals (subject to certain exceptions described above). Allowing a SAG, which has no statutory responsibility or liability, to preempt the Utilities' decisions about their programs is untenable. Assuming a gas utility SAG is created, the Commission should reject any decision-making role for a SAG.

In addition to the SAG, the Utilities support the formation of what they called a "gas evaluation working group." This group's mission would be to formulate common evaluation methodologies for each basic program type that all the utilities would use. Like the SAG, participation would be voluntary. The working group would try and form consensus around impact evaluation methodology for like programs and then instruct its own independent evaluation contractors to implement those methodologies. This would provide consistency between utilities for like programs. It would differ from the SAG because evaluation issues require different skill sets. Also, the SAG would have limited time to cover many diverse issues related to planning and implementation. By breaking evaluation out into a separate group, more focus can be paid to this critical topic. *Id*. at 21.

g. Portfolio Flexibility

Mr. Mosenthal testified about constraints on program changes during the Plan Period. AG Ex 1.0 at 48-49. As the Utilities explained in their Petition, it is impossible to anticipate every factor that may affect implementation of the Plan. For example, discussions with trade allies will likely affect program implementation. As the Utilities prepare to implement the measures and as implementation progresses, they will refine the programs. They do not anticipate any substantial program changes, but, should any substantial changes be required, the Utilities would file for review and approval.

Commission-imposed restrictions on flexibility, as discussed by Mr. Mosenthal, are more likely to reduce achieved savings than to maintain or increase net savings and prevent ongoing provision of programs across rate classes. The Utilities will participate in a gas utility SAG process, which will provide a forum for all parties to adequately understand any proposed changes to the Plan. The Utilities also agree that they would file substantial Plan changes with the Commission. NS-PGL Ex. 3.0 at 18.

B. Section 8-104(f)(2)

Section 8-104(f)(2) states that the utility shall: "Present proposals to implement new building and appliance standards that have been placed into effect." The Plan meets this requirement. The Utilities designed their programs using applicable building codes and appliance standards to determine eligibility of certain measures and services for the inclusion of the Utilities' programs. If changes occur in new building and appliance standards during the Plan Period, the Utilities will make program design changes to accommodate those new standards. NS-PGL Ex. 1.0 at 12. Neither Staff nor any intervener testimony contested this issue. Staff witness Dr. David Brightwell stated that he reviewed five[7] of the eight filing requirements and believes that the Utilities' Plan is substantially consistent with the filing requirements. ICC Staff Ex. 1.0 at 2. The Commission should find that the Utilities met the requirements of subsection (f)(2).

C. Section 8-104(f)(3)

Section 8-104(f)(3) states that the utility shall: "Present estimates of the total amount paid for gas service expressed on a per therm basis associated with the

---

[7] He stated that Mr. Zuraski reviewed subsection (f)(1), subsection (f)(6) does not apply to the Utilities, and he had comments on subsection (f)(8). ICC Staff Ex. 1.0 at 2.

proposed portfolio of measures designed to meet the requirements that are identified in subsection (c) of this Section, as modified by subsection (d) of this Section." The Plan meets this requirement. The Utilities estimated savings over the Plan Period to cost $1.66 per therm for North Shore and $2.00 per therm for Peoples Gas. The total cost for the Plan Period is $4.2 million for North Shore and $22.5 million for Peoples Gas. These values include the cost for the independent EM&V contractor. They do not include funding for on-bill financing or DCEO's share of the budget. NS-PGL Ex. 1.0 at 12. Neither Staff nor any intervener testimony contested these calculations. Dr. Brightwell stated that he reviewed five of the eight filing requirements and believes that the Utilities' Plan is substantially consistent with the filing requirements. ICC Staff Ex. 1.0 at 2. The Commission should find that the Utilities met the requirements of subsection (f)(3).

D. Section 8-104(f)(4)

Section 8-104(f)(4) states that the utility shall: "Coordinate with the Department to present a portfolio of energy efficiency measures proportionate to the share of total annual utility revenues in Illinois from households at or below 150% of the poverty level. Such programs shall be targeted to households with incomes at or below 80% of area median income." The Plan meets this requirement. Dr. Brightwell stated that he reviewed five of the eight filing requirements and believes that the Utilities' Plan is substantially consistent with the filing requirements. ICC Staff Ex. 1.0 at 2.

The Utilities communicated and supported DCEO throughout the planning process. They provided data to DCEO on the markets it will serve, budgets, goals and inputs for the cost-effectiveness screening analysis. Beginning in April 2010 and lasting throughout the planning process, they conducted in-person meetings and weekly conference calls with DCEO. Based on these meetings, all spending and savings for the low income sector will be DCEO's responsibility. The Utilities have not designed or budgeted for any programs targeting low income customers who pay directly for their own gas space or water heating. NS-PGL Ex. 1.0 at 6.

DCEO witness Mr. Jonathan Feipel addressed funding for the DCEO programs, including the low income programs. DCEO prefers a levelized budget approach. Mr. Feipel also expressed concerns about DCEO being able to meet the low income goals within Integrys' budgets. He stated that an alternative to his levelized funding proposals is for Integrys to include the low income proposals in its plan. DCEO Ex. 1.0 at 40-45.

1. Levelized Budget

First, "Integrys" is not proposing a single plan for its two utilities. North Shore and Peoples Gas will implement separate plans, albeit plans with many common features. This distinction is important because each utility will have a budget that determines "available funding," and each utility as well as DCEO will need to meet distinct targets for each service territory. NS-PGL Ex. 3.0 at 25.

Second, as stated in Section III.A.1.a, *supra*, the Utilities are proposing to meet each year's savings requirements, rather than focusing on the Plan Period, and their funding is consistent with this ramping up approach. DCEO's levelized approach would require the Utilities to provide more funding in year one than they are collecting from ratepayers. NS-PGL Ex. 1.0 at 7. It is unclear from DCEO's testimony if DCEO concurs with the Utilities' definition of "available funding." For each Program Year, DCEO is entitled to 25% of the available funds approved by the Commission and recovered through Rider EOA. As used in the Utilities' proposed rider and Section 8-104(e), available funding is the funding "associated with energy efficiency programs approved by the Commission." Therefore, when the rider uses the term "available funding," this means that DCEO is entitled (subject to meeting other legal requirements) to receive 25% of amounts recovered from customers under Rider EOA for each of the Utilities. NS-PGL Ex. 2.0 REV at 14. For example, if the Utilities' Plan to achieve each of their goals has a budget of $5.0 million for the first year of the Plan Period, DCEO's budget should be $1.67 million. This would equate to a total budget of $6.67 million, of which $1.67 million or 25% would be for DCEO. NS-PGL Ex. 1.0 at 6-7. If DCEO is proposing to receive more than 25% of the "available funding," this is contrary to Section 8-104.

Third, the Utilities would oppose the Commission requiring that they adopt a levelized approach. Their Plan is based on gradually ramping up to meet the goals. NS-PGL Ex. 3.0 at 24.

Fourth, the Utilities would not oppose the Commission opting to accommodate DCEO's preference for a levelized approach limited to the DCEO programs, provided that the Commission gives guidance on cost recovery. *Id*.

Proposed Rider EOA would require at least the following changes, with an attendant increase in the complexity of the rider:

(1) DCEO would need to split its budget into categories consistent with Rider EOA's service classification categories. This split is not necessary under the Utilities' proposal because DCEO does not have a separate funding budget;

instead, as Section 8-104 prescribes, DCEO would receive 25% of available funds for energy efficiency collected from customers.

(2) Rider EOA would require separate calculations, separate factors and separate reconciliations for DCEO costs and recoveries, adding to the rider's complexity. These separate calculations are not necessary under the Utilities' proposal because Rider EOA does not have separate factors for DCEO that would require individual calculations and reconciliations. A change to the methodology for setting DCEO's budget would likely result in new Rider EOA charges for DCEO Residential S.C. No. 1, DCEO Residential S.C. No. 2, and DCEO C&I for S.C. Nos. 4, 5, 7 and 8 for Peoples Gas, and 3, 4 and 6 for North Shore.

These changes would also be required with any change in DCEO funding levels from the amounts included in the Utilities' Plans that are based on a percentage of the total annual energy efficiency recoveries through Rider EOA. NS-PGL Ex. 4.0 at 12.

2. Low Income

First, as stated above, "Integrys" is not proposing a single plan for its two utilities. This distinction is important in this context because Peoples Gas has a significantly larger proportion of low income customers. NS-PGL Ex. 3.0 at 25.

Second, the Utilities agree with DCEO that it makes sense for DCEO to serve the entire low income market. Splitting responsibility between the Utilities and DCEO would not be efficient. As to Peoples Gas, it is premature to conclude that funding will be inadequate. As Mr. Marks explained, the Utilities acknowledge that the low income market is more expensive to serve, but he cited experience with gas efficiency programs targeting the low income sector suggesting that there are significant energy savings opportunities at reasonable costs. This is a not an issue for North Shore. *Id*.

The Commission should find that the Utilities met the requirements of subsection (f)(4) and approve the Utilities' definition of "available funding" for purposes of determining the funds they must remit to DCEO.

E. Section 8-104(f)(5)

Section 8-104(f)(5) states that the utility shall: "Demonstrate that its overall portfolio of energy efficiency measures, not including programs covered by item (4) of this subsection (f), are cost-effective using the total resource cost test and represent a diverse cross section of opportunities for customers of all rate classes to participate in the programs." The Plan meets this requirement. Dr. Brightwell stated that he reviewed five of the eight filing requirements and believes that the Utilities' Plan is substantially consistent with the filing requirements. ICC Staff Ex. 1.0 at 2

The TRC result for the total portfolio, not including any savings or costs from DCEO, is 2.0 for North Shore Gas and 2.2 for Peoples Gas (meaning that benefits are 2.0 and 2.2 times greater than program costs, respectively). In addition, all measures and all programs in the portfolio have TRCs above 1.0, indicating that benefits are always greater than costs. NS-PGL Ex. 1.0 at 13; NS-PGL Ex. 1.2 at 9.

Dr. Brightwell recommended that the Commission limit measures to those that are cost-effective under the TRC test. ICC Staff Ex. 1.0 at 2-5. The Utilities included only measures that met the TRC test. However, the Utilities disagree that Section 8-104 requires that the portfolio include only measures with a TRC in excess of 1.0. Section 8-104(b) states in part:

> For purposes of this Section, “energy efficiency” means measures that reduce the amount of energy required to achieve a given end use and “cost-effective” means that the measures satisfy the total resource cost test which, for purposes of this Section, means a standard that is met if, for an investment in energy efficiency, the benefit-cost ratio is greater than one. The benefit-cost ratio is the ratio of the net present value of the total benefits of the measures to the net present value of the total costs as calculated over the lifetime of the measures. The total resource cost test compares the sum of avoided natural gas utility costs, representing the benefits that accrue to the system and the participant in the delivery of those efficiency measures, as well as other quantifiable societal benefits, including avoided electric utility costs, to the sum of all incremental costs of end use measures (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side measure, to quantify the net savings obtained by substituting demand-side measures for supply resources.

220 ILCS 5/8-104(b). The Utilities interpret this subsection as requiring the “measures” considered together as a portfolio to meet the TRC. For example, the law speaks to the “total benefits of the measures” and the sum of avoided costs relative to the sum of incremental costs of end use measures.

The Commission should find that the Utilities met the requirements of subsection (f)(5) and approve the Utilities’ interpretation that Section 8-104 assesses cost effectiveness on a portfolio level and not a measure level.

F. Section 8-104(f)(6)

Section 8-104(f)(6) states that the utility shall: “Demonstrate that a gas utility affiliated with an electric utility that is required to comply with Section 8-103 of this Act has integrated gas and electric efficiency measures into a single program that reduces program or participant costs and appropriately allocates costs to gas and electric ratepayers. The Department shall integrate all gas and electric programs it delivers in any such utilities’ service territories, unless the Department can show that integration is not feasible or appropriate.” The Utilities are not affiliated with an Illinois electric utility and, thus, are not required to meet this requirement. *Also see*, ICC Staff Ex. 1.0 at 2 fn 1. However, the Utilities have communicated with, and plan to partner with, Commonwealth Edison Company ("ComEd") for some programs and measures. ComEd is the electric utility providing service in both North Shore's and Peoples Gas' service territories. Coordinating with ComEd will allow for streamlining administration, marketing and delivery where practical and maximizing participation. NS-PGL Ex. 1.0 at 4.

The Utilities developed their Plan so that all programs will be coordinated with ComEd program offerings to the greatest extent reasonable. Specifically,

- Residential and C&I Prescriptive – The Utilities will look for joint measures that can benefit both the gas and electric energy use.
- Residential Home Energy Reports – The Utilities will look for vendors that have the capability to combine gas and electric in their product offering.
- Multifamily Direct Install – The Utilities and ComEd intend to offer this program jointly.
- Residential Whole-House Retrofit Program – The Utilities and ComEd intend to offer this program jointly.
- C&I Custom - The Utilities and ComEd will coordinate their efforts when possible to provide a comprehensive service to customers.
- C&I Retro-Commissioning - The Utilities and ComEd intend to offer this program jointly.
- Small Business Efficiency Program - The Utilities and ComEd intend to offer this program jointly

Id. at 9.

Mr. Mosenthal stated that “[t]he Commission should direct the Companies to revise their plans to commit to these integrated electric-gas program efforts, and ensure their plans correctly match ComEd’s plans to efficiently and effectively pursue integrated programs.” AG Ex. 1.0 at 51. Criticism of the Utilities’ efforts to work with ComEd is unfair. The Utilities began the planning process in late 2009. Since that time, they have held frequent meetings with ComEd. These meetings were highly productive and were a forum to share program design ideas, assumptions for program screening and budget development. The Utilities have made substantial efforts to develop programs that would provide ratepayer savings and efficiencies from joint delivery. ComEd has and continues to be very open and cooperative, sharing their experience with programs which have already been in the field, and it will now add a gas component (such as retro-commissioning). NS-PGL Ex. 3.0 at 22.

The Utilities’ ability to match the level of effort in jointly delivered programs with ComEd is constrained by the fact that their goals for the first Plan Period are 0.2%, 0.4% and 0.6%. ComEd’s goals for its period are 0.8%, 1.0% and 1.2%. Given the divergence in goals, the Utilities cannot match ComEd’s from a budgetary perspective. *Id*. As discussed in Section III.A.2.c, *supra*, the law only requires the Utilities to meet specified savings requirements. It does not require them or authorize the Commission to require them, to spend additional amounts to exceed the statutory requirements.

Mr. Mosenthal cited what he calls a “lack of specificity and effort in planning will undermine the effectiveness of the custom program and will result in lost energy efficiency opportunities.” AG Ex. 1.0 at p. 51. The Utilities’ implementation contractor, Franklin Energy Services, LLC, ("Franklin") has been working diligently with ComEd to develop joint implementation processes. Jointly delivered programs are not going to begin until July 1. Contrary to Mr. Mosenthal's criticism, the Utilities are on schedule for an effective joint program delivery process to be in place by July 1, 2011. NS-PGL Ex. 3.0 at 23.

The Commission need not find that the Utilities complied with subsection (f)(6), as it does not apply to them. However, the Commission should reject criticism that the Utilities' cooperation with ComEd on certain programs is inadequate. The Commission should also reject any requests that the Utilities spend additional funds on programs being coordinated with ComEd; such additional funding is unnecessary for the Utilities to meet their statutory obligations.

G. Section 8-104(f)(7)

Section 8-104(f)(7) states that the utility shall: "Include a proposed cost recovery tariff mechanism to fund the proposed energy efficiency measures and to ensure the recovery of the prudently and reasonably incurred costs of Commission-approved programs." The Plan meets this requirement. The proposed cost recovery tariff is Rider EOA. NS-PGL Ex. 2.0 REV at 5; NS-PGL Ex. 2.1.[8] As Staff witness Dianna Hathhorn testified, the Utilities agreed to four specific language changes in responses to data requests. ICC Staff Ex. 4.0. Staff witness John W. Hendrickson concluded that the Utilities' proposal to recover their Plan costs from the rate groups defined in the rider is appropriate, and he recommended that the Commission approve the proposal ICC Staff Ex. 3.0 at 3.

[8] This exhibit is not in the required tariff format but includes the substance of the Utilities' proposal. When the Utilities make their compliance filings, they will conform the rider as well as any required changes to the Table of Contents to the Commission's format rules. NS-PGL Ex. 2.0 REV at 5.

Rider EOA applies to all service classifications but not to exempt or self-directing customers under Section 8-104(m) of the Act. The rider will recover eligible costs of energy efficiency and on-bill financing through per customer charges. Energy efficiency costs would include the Utilities' and DCEO's costs. Rider EOA per customer charges would be determined separately for:

(1) Residential Energy Efficiency for S.C. No. 1;

(2) Residential Energy Efficiency for S.C. No. 2;

(3) C&I Energy Efficiency for combined Peoples Gas' S.C. Nos. 2; 4 (Large Volume Demand Service); 5 (Contract Service for Electric Generation); 7 (Contract Service to Prevent Bypass); and 8 (Compressed Natural Gas Service and North Shore's S.C. Nos. 2; 3 (Large Volume Demand Service); 4 (Contract Service to Prevent Bypass); and 6 (Contract Service for Electric Generation);

(4) On-Bill Financing for S.C. No. 1; and

(5) On-Bill Financing for S.C. No. 2.

NS-PGL Ex. 2.0 REV at 6.

Each per customer charge ("Effective Component") is the sum of applicable residential energy efficiency, C&I energy efficiency, and on-bill financing per customer charges. The Effective Components for each service classification closely mirror the budgets and programs available to each service classification. Following each Program Year (the twelve-month period beginning June 1), the Utilities would prepare reconciliation statements comparing recoveries through Rider EOA to actual expenses incurred during the year. Amounts over- or under-recovered plus interest are converted to per customer adjustments, which are amortized over a nine-month period commencing September 1. Any amounts over- or under-recovered from the Reconciliation Adjustments are then carried over into the next year's reconciliation. Section D of Rider EOA specifies the methodologies for calculation of the Effective Components, Reconciliation Adjustments and Commission Ordered Adjustments, and the process for revising Effective Components during the Program Year. *Id*. at 6-7.

Rider EOA provides for several Commission filings:

(1) Annually, the Utilities would file reports showing the Effective Component determination to be in effect during the upcoming Program Year. Rider EOA provides for revisions to the budget and Effective Components during the Program Year, if necessary.

(2) Beginning in 2012, the law provides that the Commission will initiate an annual review to reconcile any amounts billed in the previous Program Year with the actual costs. The Utilities would annually file the reconciliation and reconciliation adjustments no later than August 31.

(3) Within 45 days of the end of each quarter, the Utilities would file status reports tracking implementation of and expenditures for each utility's portfolio of energy efficiency measures and DCEO's portfolio of energy efficiency measures.

(4) Annually, no later than February 1, the Utilities would file an internal audit. The tariff identifies several tests to determine whether calculations and reports are in accordance with Rider EOA's terms. *Id*. at 7-8.

A per customer rate design, as opposed to a per therm approach, is sound. The Utilities based their current rates on rate design objectives, including: (1) better align costs and revenue recovery; (2) provide equity between and within rate classes; (3) maintain rate design continuity; (4) reflect gradualism; and (5) retain customers on their systems. Rider EOA is an extension of those objectives. *Id*. at 8.

First, unlike a per therm charge, amounts billed under a per customer charge are not influenced by usage variations caused by weather and fluctuating gas prices as well as other influences that can contribute to larger over- or under-recoveries. Recoveries are relatively stable and more predictable with a per customer methodology, thus making funding to implement the Utilities' and DCEO's measures more stable. *Id*. at 8-9.

Second, charges for each rate class reflect the costs budgeted for the programs that customers in each rate class are eligible to participate in and benefit from. Costs are spread evenly among customers within the rate class or classes. *Id*. at 9.

Third, Rider EEP (funding for the Chicagoland Program) uses a per customer charge for recovery of eligible costs. *Id*.

Fourth, the per customer charge contributes to gradualism through spreading costs evenly among customers rather than potentially adversely affecting larger usage customers with a per therm charge. *Id*.

Fifth, retaining customers on the system benefits all customers through increased sharing of fixed costs. *Id*.

Collections under Rider EOA determine "available funding." Available funding under Section 8-104(e) is the funding "associated with energy efficiency programs approved by the Commission." Therefore, when the tariff uses the term "available funding," this means that DCEO is entitled (subject to meeting other legal requirements) to receive 25% of amounts recovered from customers under Rider EOA for each of the Utilities. *Id*. at 14.

Dr. Brightwell advocated a per therm mechanism, rather than a per customer mechanism. ICC Staff Ex. 1.0 at 7-10. Mr. Mosenthal opposed the Utilities' proposed per customer mechanism. AG Ex. 1.0 at 18-21. For the reasons described above, the Utilities support a per customer approach. A per therm approach creates an uncertain revenue stream, and the bill impacts of a per therm approach are substantial.

First, amounts collected under the per therm method are necessarily a function of billed consumption. In months when usage is relatively low, amounts billed and collected under Rider EOA will likewise be relatively low. This could be especially problematic for DCEO, as, consistent with the law, the Utilities will forward funds to DCEO only after they are collected ("A utility shall not be required to advance any moneys to the Department but only to forward such funds as it has collected." 220 ILCS 5/8-104(e).) Recoveries from customers under a per customer methodology are relatively stable because customer counts do not fluctuate significantly on an annual basis. However, therm deliveries fluctuate. In the last five calendar years (2005-2009), for example, weather in the Utilities' service territories has ranged from about 8.5% warmer than normal to about 9.5% colder than normal. In warmer than normal years, lower therm deliveries would result in Rider EOA recovering less than required to meet the budget under a per therm methodology. NS-PGL Ex. 4.0 at 11.

Second, the Utilities analyzed the bill impacts associated with a per therm approach. With a per customer methodology spreading costs evenly across accounts within service classifications, cost recovery is better aligned to the Utilities' Plan, which spread initiatives across all types of customers and does not heavily target the largest customers over smaller customers. Under a per therm methodology, the majority of costs are funded by the largest customers from each service classification. In aggregate, 20% of customers (*i.e.*, larger customers) would fund 58% of the costs under a per therm methodology. *Id*. at 10. More specifically,

Peoples Gas			
SC	**Per Customer (annual)**	**Per Therm (annual, range)**	**Top 20% under Per Therm**
1	Year 1: $4.92 Year 3: $8.40	Year 1: $0 - $90.72 Year 3: $0.01 - $160.90	41%
2	Year 1: $53.76 Year 3: $102.96	Year 1: $0 - $3,266.80 Year 3: $0.01 - $6,183.58	78%
4, 5, 7, 8	Year 1: $28.08 Year 3: $53.88	Year 1: $147.77 - $68,915.08 Year 3: $277.81 - $129,560.35	59%

North Shore			
SC	**Per Customer (annual)**	**Per Therm (annual, range)**	**Top 20% under Per Therm**
1	Year 1: $4.80 Year 3: $9.12	Year 1: $0 - $186.06 Year 3: $0.01 - $357.81	40%
2	Year 1: $51.96 Year 3: $106.32	Year 1: $0 - $3,094.98 Year 3: $0.01 - $6,616.86	78%

3, 4, 6	Year 1: $29.76 Year 3: $60.84	Year 1: $1,282.80 - $39,424.95 Year 3: $2,755.64 - $84,690.64	68%

Id. at 7-10; NS-PGL Ex. 4.1.

Dr. Brightwell testified that a per therm methodology should be used to provide equity and proper price incentives to reduce usage. ICC Staff Ex. 1.0 at 7. The Utilities disagree. A per customer methodology is a fair and equitable method for recovering costs from customers and managing bill impacts across customers. In addition, customers receive adequate price signals through their utility bills; the per customer methodology contributes only incrementally to provide price signals to all customers, rather than emphasizing only the largest customers, through the additional billed amount. The Utilities' Plan is intended to reach all customers, rather than overly emphasizing the largest customers who are a major focus of Dr. Brightwell's approach. The Plans are designed to provide programs to residential and C&I customers at approximately the same proportion as the revenues each sector contributes to the customer base. NS-PGL Ex. 4.0 at 10-11.

Mr. Mosenthal stated that the Utilities will charge the "largest customers (service class Nos. 4, 5, 7 and 8) *only about half as much as smaller customers* (service class No. 2). [footnote omitted] Presumably, this is based on the Companies excluding most of the commodity costs of these very large customers in its revenue calculations. This creates a very inequitable system." AG Ex. 1.0, p. 20. Mr. Mosenthal's presumption is incorrect. While it is true that the Utilities only calculated estimated commodity costs for small volume transportation customers, estimated commodity costs are only used in the calculation of the rate cap spending limits and not to establish budgets within those limits. Since the Utilities' proposed budgets for the Plan Period result in average increases to customers' bills well below the caps, estimated commodity cost is not a factor. The reason that the proposed per customer charges for S.C. No. 2 is larger is because, as a "General Service" rate, it includes both larger residential and C&I customers. The S.C. No. 2 budget includes programs for both residential and C&I customers. Since the residential programs are not targeted towards S.C. Nos. 4, 5, 7 and 8 (Peoples Gas), it is appropriate to charge these service classifications only for their share of the C&I programs, resulting in a smaller per customer charge than S.C. No. 2. The same is true for North Shore's S.C. No. 2 relative to S.C. Nos. 3, 4 and 6. *Id*. at 5.

The Commission should find that the Utilities met the requirements of subsection (f)(7), including the modifications to Rider EOA described by Ms. Hathhorn, and approve the Utilities' per customer cost recovery mechanism.

H. Section 8-104(f)(8)

Section 8-104(f)(8) states that the utility shall: "Provide for quarterly status reports tracking implementation of and expenditures for the utility's portfolio of measures and the Department's portfolio of measures, an annual independent review, and a full independent evaluation of the three-year results of the performance and the cost effectiveness of the utility's and Department's portfolios of measures and broader net program impacts and, to the extent practical, for adjustment of the measures on a going forward basis as a result of the evaluations. The resources dedicated to evaluation shall not exceed 3% of portfolio resources in any given three-year period." The Plan meets this requirement.

The Utilities retained Franklin to provide a state-of-the-art tracking system. Franklin's data tracking database is built upon the Salesforce.com development platform. This system has been enhanced to provide a robust and comprehensive energy efficiency program data management solution. NS-PGL Ex. 1.0 at 14.

The Utilities retained Navigant to provide independent evaluation services. Navigant will conduct a comprehensive impact evaluation for each program once during the three-year implementation cycle. Budget constraints would not permit impact evaluations to be conducted more than once for each program. Core programs, which will require the greatest evaluation effort and have the highest evaluation costs, will take place during years two and three. The Utilities will use the results to improve program designs and reduce net cost per therm saved. *Id*.

Dr. Brightwell recommended that the Commission require the Utilities to include in the contracts they enter into with evaluators language that would: (1) allow the Commission to terminate a contract if it determines that the evaluator was not acting independently; and (2) prevent the Utilities from terminating the contract without Commission approval. ICC Staff Ex. 1.0 at 6. The Utilities do not necessarily oppose the proposals, but they have two concerns. On the first point, the Utilities are concerned about process. The law imposes evaluation requirements and a budget cap. It is not evident from Dr. Brightwell's testimony or the cited rehearing orders how the Commission would go about terminating a contract. If the Utilities receive notice and an opportunity to respond and if they have a chance to address the potential adverse effects on submitting timely reports and staying within budget, this could alleviate some concerns. On the second point, the Utilities' contracts often have standard requirements, the breach of which is cause for termination (*e.g*., insurance coverage or conduct when on the Utilities' premises). If the requirement for Commission approval could preclude the Utilities from terminating a contract for such breaches, that would be troubling. If these concerns can be addressed by contract language that recognizes the purpose is solely the independence of the evaluator and that adverse consequences on timing and budget would be addressed, the Utilities would not oppose the proposals. NS-PGL Ex. 3.0 at 23-24.

IV. Miscellaneous

A. DCEO Plan

Except as addressed above relative to levelized funding and low-income programs, the Utilities take no position on DCEO's plan and do not oppose any of the programs described in DCEO's testimony.

B. North Shore Franchise Agreements

Martin J. Bourke, representing The Northern Illinois Municipal Natural Gas Franchise Consortium ("Consortium"), stated that it "would be constructive for the Commission to direct North Shore to consult with the Consortium in a meaningful, substantive manner on energy efficiency and related matters." Mr. Bourke also testified at some length about a "Model Franchise Agreement," and he claims that there is "clear interplay" between energy efficiency and the Consortium's efforts to establish this model agreement. Consortium Ex. 1.0 at 12.

If Mr. Bourke's issue is that he is dissatisfied with the extent to which North Shore has met with the Consortium about its model agreement (Consortium Ex. 1.0 at 9), that has no relevance to this proceeding. If his issue is that North Shore did not meet with the Consortium about energy efficiency, that is not a deficiency in the Plan.

To be clear, the Utilities worked extensively with DCEO and various stakeholders on the development of their Plan. Throughout Plan development, the Utilities engaged stakeholders to obtain input on issues that were important to each stakeholder. Meetings were held with Commission Staff, the AG, the Citizens Utility Board, The City of Chicago and ELPC. The Utilities considered all stakeholder input in the Plan preparation. They incorporated stakeholder input that did not deviate from the Utilities' overarching objectives. The Utilities worked closely with ComEd throughout the Plan development. They held weekly meetings and other meetings to discuss specific topics. The Utilities also worked with the other Illinois gas utilities subject to Section 8-104 (Ameren and Nicor) to provide consistency in program design where possible. As discussed above, the Utilities communicated and supported DCEO throughout the planning process. NS-PGL Ex. 1.0 at 3-4, 6-8.

Mr. Bourke seems concerned that North Shore did not consult with the Consortium regarding the Plan. Consortium Ex. 1.0 at 10. As the DCEO witnesses, particularly Mr. Feipel, testified, DCEO is managing the programs to achieve the statutory requirements applicable to local governments and municipalities. The Utilities' Plan does not address efficiency programs for municipalities for this reason. NS-PGL Ex. 3.0 at 26. Mr. Bourke stated that DCEO contacted the Consortium subsequent to becoming aware of its existence when it filed testimony in Northern Illinois Gas

Company d/b/a Nicor Gas Company's Section 8-104 proceeding. Consortium Ex. 1.0 at 11. DCEO is the appropriate party to work with municipal governments, and it seems that DCEO is now aware of the Consortium's interest in this matter and is talking with the Consortium.

The relevance of this proceeding to the model agreement is unclear. Based on Mr. Bourke's description of franchise agreements, it appears that the Consortium's model agreement addresses much more than energy efficiency. NS-PGL Ex. 3.0 at 26. Mr. Bourke did not include a copy of the proposed model agreement with his testimony, so what, if any, relevance it has to the Commission's decision about whether the Utilities' Plan is compliant with the Act is not apparent from the record. Mr. Bourke addressed none of the requirements in Section 8-104(f). Mr. Bourke does not claim that the Utilities' Plan falls short of any of the law's requirements, beyond, perhaps, claiming that the requirement that North Shore and DCEO coordinate in the development of the Plan was lacking because North Shore did not speak to the Consortium about its Plan. Consortium Ex. 1.0 at 10. Assuming, *arguendo*, that the Consortium wished to discuss the Plan and not its model agreement proposal, the fact that North Shore did not consult with the Consortium about the Plan it filed is not a deficiency in the Plan and is not contrary to Section 8-104.

WHEREFORE, North Shore Gas Company and The Peoples Gas Light and Coke Company respectfully submit their Brief in this proceeding and request that the Commission: (1) approve the Plan (NS-PGL Ex. 1.2), as filed; (2) approve all elements of the evaluation, measurement and verification ("EM&V") framework described by the Utilities' witness Mr. Marks; (3) find that any gas utility stakeholder advisory group has only an advisory, and not a decision-making, role; (4) approve Rider EOA, as modified by Staff witness Ms. Hathhorn's testimony; (5) approve a per customer cost recovery mechanism for Rider EOA; (6) approve funding that ramps up to meet each year's goals, rather than a levelized funding approach; (7) approve the savings levels that the Utilities calculated based on retail customer deliveries that exclude Section 8-104(m) customers and deliveries to large volume transportation customers; (8) approve a rate impact budget calculation that excludes large volume transportation customers; (9) reject proposals that the Utilities spend more than is required to meet the savings requirements for the first three-year plan period; and (10) reject the Consortium's requests related to franchise agreements.

Respectfully submitted,
North Shore Gas Company
The Peoples Gas Light and Coke Company

/S/ MARY KLYASHEFF
Mary Klyasheff
An Attorney for
North Shore Gas Company
The Peoples Gas Light
and Coke Company

Jodi J. Caro
Mary Klyasheff
Integrys Business Support, LLC
Legal Services Department
130 East Randolph Drive
Chicago, Illinois 60601
312-240-4470

Dated at Chicago, Illinois
this 6th day of January, 2011

Attorneys for
North Shore Gas Company
The Peoples Gas Light and Coke Company

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

North Shore Gas Company The Peoples Gas Light and Coke Company Petition Pursuant to Section 8-104 of the Public Utilities Act to Submit an Energy Efficiency Plan	))))))))	Docket No. 10-0564

NOTICE OF FILING AND CERTIFICATE OF SERVICE

To: Service List

PLEASE TAKE NOTICE that on January 6, 2011, I have filed with the Chief Clerk of the Illinois Commerce Commission, the Brief of North Shore Gas Company and The Peoples Gas Light and Coke Company, a copy of which is hereby served upon you by e-mail, messenger, overnight courier and/or United States Mail on January 6, 2011.

/S/ MARY KLYASHEFF
Mary Klyasheff
An Attorney for
North Shore Gas Company
The Peoples Gas Light
and Coke Company

Dated at Chicago, Illinois
this 6th day of January, 2011